

# HOUSE JOURNAL

OF THE

## Second Extraordinary Session

OF THE

### EIGHTH

# Legislative Assembly

OF THE

## STATE OF MONTANA.

---

Convened at Helena, the Capital of said State, in Extra Session  
on the First day of December, 1903, and ending on  
the Eleventh day of December, 1903.

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PUBLISHED BY AUTHORITY

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1904.  
STATE PUBLISHING CO.,  
PRINTERS, STATIONERS AND BINDERS,  
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## Officers and Members

**of the Eighth Legislative Assembly of the State of Montana.**

Governor, JOSEPH K. TOOLE,  
Lieutenant-Governor and President of the Senate, FRANK G. HIGGINS.

### STATE SENATORS

NAME	Politics	County	Postoffice Address
Albright, Jacob .....	Rep.....	Madison.....	Virginia City.....
*Anderson, Elmer J.....	Rep.....	Meagher.....	White Sulphur Springs...
Bailey, J. W. ....	Rep.....	Sweet Grass.....	Big Timber .....
*Biggs, Wesley M. ....	Dem. ....	Lewis and Clarke.....	Helena.....
Boune, George Blake.....	Rep.....	Choteau.....	Hill .....
Brennen, William James.....	Rep.....	Flathead.....	Big Fork .....
*Conrow, John M. ....	Dem. ....	Park.....	Livingston.....
*Cullen, Thomas Patrick.....	Dem. ....	Dawson.....	Glendive.....
Donlan, Edward.....	Rep.....	Missoula.....	Missoula.....
Durham, George P. ....	Dem. ....	Granite.....	Philipsburg.....
*Hoffman, Charles Wheeler.....	Dem. ....	Gallatin.....	Bozeman .....
Hopkins, James Skinner.....	Dem. ....	Rosebud.....	Forsyth.....
Johnson, Edward Anderson.....	Dem. ....	Ravalli.....	Hamilton.....
*Kennedy, Jacob M. ....	Dem. ....	Deer Lodge.....	Anaconda.....
Kohrs, Conrad Carsten.....	Rep.....	Powell.....	Deer Lodge.....
Maddox, Fletcher.....	Rep.....	Cascade.....	Great Falls.....
Mahon, Archibald W. ....	Dem. ....	Valley.....	Glasgow.....
*Meyer, William Frederick.....	Rep.....	Carbon.....	Red Lodge.....
*Murray, James P. ....	Dem. ....	Beaverhead.....	Dillon.....
*McLean, Kenneth.....	Rep.....	Custer.....	Miss City.....
Ralston, Samuel Franklin.....	Dem. ....	Teton.....	Chouteau.....
Sherlock, Henry Lloyd.....	Dem. ....	Jefferson.....	Bonider.....
T-wey, Daniel.....	Dem. ....	Silver Bow.....	Butte.....
Waite, John David.....	Rep.....	Fergus.....	Lewistown.....
Whipple, Charles A. ....	Dem. ....	Broadwater.....	Townsend.....
Yegen, Christian.....	Rep.....	Yellowstone.....	Billings.....

\*Holdovers, elected 1900.

X. K. STOUT, Secretary.



# HOUSE OF REPRESENTATIVES

NAME	Politics	County	Postoffice Address
Allen, William R.	Rep.	Deer Lodge	Anaconda
Arthur, Samuel	Dem.	Granite	Granite
Axtell, Frank B.	Lab.	Silver Bow	Butte
Bray, Charles H.	Rep.	Lewis and Clarke	Helena
Bray, William	Rep.	Rosebud	Rosebud
Beaudry, Leon Edward	Lab.	Deer Lodge	Anaconda
Benson, Fred G.	Rep.	Lewis and Clarke	Helena
Bever, Chauncey C.	Rep.	Yellowstone	Billings
Brownlee, Robert	Rep.	Sweet Grass	Melville
Buchanan, Patrick Blair	Rep.	Cascade	Belt
Burt, George W.	Rep.	Custer	Terry
Cannon, Harvey S.	Rep.	Flathead	Kalispell
Conner, Aaron	Rep.	Ravalli	Darby
Dempster, Charles W.	Lab.	Silver Bow	Butte
Downey, Timothy Driscoll	Dem.	Jefferson	Basin
Duggan, Lawrence	Lab.	Silver Bow	Butte
Dwight, Reuben	Rep.	Missoula	Missoula
Everett, Thomas Madison	Rep.	Chouteau	Harlem
Farmer, Robert William	Fus. Dem.	Silver Bow	Butte
Faust, Henry J.	Rep.	Powell	Ovando
Flaherty, John	Dem.	Jefferson	Cold Spring
Gagner, Frederick	Lab.	Deer Lodge	Anaconda
Giltinan, Harry Joseph	Rep.	Meagher	White Sulphur Springs
Graham, Davis	Rep.	Missoula	Missoula
Harrison, William Henry	Rep.	Cascade	Neihart
Hoffelin, Charles Sumner	Rep.	Park	Livingston
Hilger, David	Dem.	Fergus	Lewistown
Hulman, John Roland	Rep.	Flathead	Columbia Falls
Johnson, Herbert Earle	Rep.	Broadwater	Winston
King, Ernest W.	Rep.	Fergus	Lewistown
Lancaster, John Wesley	Rep.	Ravalli	Stevensville
Lanstrun, Oscar Monroe	Rep.	Lewis and Clarke	Marysville
Lehsou, Henry William	Rep.	Granite	Garnet
Lienemann, Louis	Fus. Dem.	Silver Bow	Butte
Linderman, Frank Bird	Rep.	Madison	Sheridan
Lynch, James Henry	Anti-Tr D	Silver Bow	Butte
Martin, James E.	Dem.	Gallatin	Bozeman
Miller, Charles B.	Rep.	Lewis and Clarke	Helena
Miles, John H.	Rep.	Madison	Pony
Morrissey, John	Lab.	Deer Lodge	Anaconda
Mullins, Patrick	Fus. Dem.	Silver Bow	Butte
McCone, George	Rep.	Dawson	Reeta
MacDonald, Duncan A.	Rep.	Jefferson	Alhambra
MacGinniss, John	Fus. Dem.	Silver Bow	Butte
Noble, John M.	Rep.	Flathead	Kalispell
O'Keefe, Timothy C.	Lab.	Deer Lodge	Anaconda
Owen, Charles Milton	Rep.	Missoula	Missoula
Pearson, Louis J.	Rep.	Cascade	Great Falls
Pelletier, Fred J.	Lab.	Silver Bow	Butte
Rice, James Horton	Rep.	Chouteau	Fort Benton
Sales, Walter Henry	Rep.	Gallatin	Mantattan
Self, James Madison	Rep.	Missoula	Plains
Schwend, Joseph H.	Lab.	Deer Lodge	Anaconda
Shannon, Joseph	Lab.	Silver Bow	Butte
Stadler, Louis	Rep.	Lewis and Clarke	Helena
Stapleton, Guy W.	Fus. Dem.	Silver Bow	Butte
Story, Nelson, Jr.	Rep.	Gallatin	Bozenian
Swindiehurst, Thomas Martin	Dem.	Park	Livingston
Sykes, Henry N.	Rep.	Custer	Ekalaka
Teal, Thomas Hilton	Rep.	Madison	Virginia City
Tolman, John N.	Rep.	Carbon	Red Lodge
Tooley, Clarence P.	Rep.	Meagher	Two Dot
Vagg, Harry A.	Rep.	Valley	Saco
Webb, Jonathan E.	Rep.	Teton	Chouteau
White, Benjamin F. (Speaker)	Rep.	Beaverhead	Dillon
Whiteley, William F.	Lab.	Silver Bow	Butte
Williams, David F.	Rep.	Broadwater	Radersburg
Wilson, Charles Albert	Rep.	Cascade	Great Falls
Wilson, John Barrie	Rep.	Lewis and Clarke	Helena
Wood, George Rodney	Dem.	Cascade	Great Falls
Woodworth, George	Rep.	Beaverhead	Wisdom
Word, Charles Francis	Dem.	Lewis and Clarke	Helena

NATHAN GODFREY, Chief Clerk.





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# HOUSE JOURNAL—Second Extraordinary Session.

STATE CAPITOL, HELENA, MONTANA.

## FIRST DAY.

Tuesday, December 1st, 1903.

Pursuant to the following proclamation, to-wit:

### PROCLAMATION.

Executive Office, Helena, Montana,

Whereas, a large per cent of the resident taxpayers of the state and many representatives of organized labor and others, have by petitions and otherwise, represented to me the deplorable industrial condition existing in three of the populous cities of the state, as well as in many other localities within our borders, consequent upon the cessation of operations of many large industries of the state: and—

Whereas, they further represent the desirability of general legislation by which the bias and prejudice of district judges be made a disqualification of such judges to try any case that may come before them or either of them, as well as legislation making suitable and efficient provision for the trial of such case or cases in such event, and also the desirability of general legislation conferring upon the Supreme Court power on appeal to review the facts in equity cases and—

Whereas, I have reason to believe that work will be forthwith resumed in all the suspended operations aforesaid if an extraordinary session of the legislature is called to consider such legislation. Now, Therefore, I, J. K. Toole, Governor of the State of Montana, disclaiming any reflection upon the integrity of the judiciary of this state, or any member thereof, but yielding solely to the exigency of the hour and the formidable requests presented to me by petition and otherwise, do hereby, and by virtue of the power and authority in me vested by the constitution convene the Eighth Legislative Assembly in extraordinary session at Helena, Montana, the Capital of said State, at 12 o'clock M., on December 1st, A. D., 1903, for the purpose of considering the legislation hereinbefore referred to and taking such action thereon as it may deem wise and expedient.

In Witness Whereof, I have hereunto set my hand and caused the great seal of the State of Montana to be affixed.

Done at Helena, the Capital, this tenth day of November, A. D. one thousand nine hundred and three.

J. K. TOOLE, Governor.

By the Governor:

George M. Hays, Secretary of State.

The Eighth Legislative Assembly met in extraordinary session at the hour of twelve M.

Mr. Speaker in the chair.

Roll was called and the following members answered to their names:

Arthur, Axtell, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Burt, Cannon, Conner, Dempster, Downey, Duggan, Dwight, Everett, Farmer, Faust, Flaherty, Gangner, Glitinan, Graham, Harrison, Hilger, Hilman, Johnson, King, Lancaster, Lanstrum, Lienemann, Linder-

man, Lynch, Martin, Miller, Miles, Morrissey, McCone, MacDonald, MacGinniss, Noble, O'Keefe, Owen, Pearson, Pelletier, Rice, Sales, Self, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal, Tolman, Tooley, Vagg, Webb, Whitely, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker.

On motion of Lanstrum indefinite leave of absence was granted to Allen on account of sickness.

Prayer by the Chaplain.

Mr. Speaker directed the clerk to read the proclamation of the Governor, calling the extraordinary session.

Miller offered the following:

"Mr. Speaker:—I move that a committee of three be appointed to notify the Governor that the House is now organized and ready for business and that the Senate be invited to meet in joint session at once to receive the Governor's message." Adopted.

Mr. Speaker appointed as a committee to notify the Governor, Bray of Lewis and Clarke, Stapleton and Word.

Mr. Speaker also appointed as a committee to invite the senate to meet in joint session with the House to receive the Governor's message, Swindlehurst, Everett and Schwend.

A committee from the Senate was announced at the bar of the House, and informed the House that the Senate was organized and ready for business:

Miller introduced the following:

"Mr. Speaker:—I move that no committee clerks be employed at this special session except such as may be recommended by the committee appointed at the regular session, and that they further report when such services are necessary."

A division was called upon its adoption. Ayes 15, Noes 27. Motion rejected.

The committee appointed to invite the senate reported they had performed their duty.

The Governor was announced at the bar of the House, and was escorted to a seat near Mr. Speaker.

The Senators were announced at the bar of the House, were received and took their seats in the body of the House.

The Governor read the following message:

#### "MESSAGE"

"Executive Office, Helena, Montana, December 1st, 1903.

To the Senate and House of Representatives of the Eighth Legislative Assembly in Extraordinary Session:

The purpose for which and the circumstances under which you are assembled are set forth in the proclamation convening you in extraordinary session. Much stress has been laid upon what is claimed to be an imperfection of our laws in this, that no provision is made for disqualifying a district judge where bias or prejudice is shown. This omission was sought to be corrected at the Seventh Legislative Session by the passage of a bill which for reasons then stated was vetoed. At the Eighth Regular Session the subject again received the attention of the Legislature, and a bill constructed on different lines but designed to accomplish the same result, was passed, but it was found upon a test case that it contravened the constitution in several respects, and for these reasons failed to become operative. I am not advised, except in a general way, as to what will be proposed in that behalf at this session, nor am I, in view of the objections heretofore urged and sustained, prepared to make any recommendations concerning the same. If your knowledge of the fundamental law and the exigencies of the hour fail to point the way, I must assume that those who by petitions and otherwise have been insistent upon calling you together will find and formulate an adequate remedy; but whatever form it takes, it must be remembered that you are legislating for the future and



for the whole state, and that your task is not without difficulty, whether considered with reference to constitutional restraints, public policy or practical utility. If a change of judge be suggested it must not be forgotten that the Supreme Court, according to its decision in *re Ryan versus Weston*, cannot make the appointment for the reason that it is outside of its constitutional powers. It would also seem clear, under the decision referred to, that wherever the power of appointment is lodged, no limitation can be imposed by legislation which would exclude the right to appoint any judge, notwithstanding he might reside within the same district as the disqualified judge. The situation therefore calls for the exercise of consummate skill and judgment on your part. It is therefore incumbent upon you to see to it that every paragraph, provision and page of any measure proposed along these lines are so plain and palpable as to avoid the suggestion or suspicion of being disingenuous, dissembling or deceptive, thus avoiding, if possible, the necessity of judicial construction in case of its final passage. While isolated and individual cases may serve to show the defects, if any, of existing laws and the necessity for corrective legislation, we should be mindful of the fact that an eye single to our duty to the state makes it imperative that we avoid even the semblance of partisanship or special legislation which are forbidden alike by public policy and the constitution. Concerning the second proposition mentioned in the proclamation, to-wit: the power of the Supreme Court to review the evidence on appeal in equity cases, it would seem to me that if provision is made which in the opinion of the legislature, is designed to make more certain a fair trial before a fair judge, the reason for a review of the evidence by the Supreme Court in equity cases has largely failed. Such evidence when it reaches the Supreme Court is in narrative form only. It is not impressed by the presence of the witnesses and their manner of testifying. Every one must know there is a difference in the effect of the same words when delivered in open court from the mouth of a witness and when read from a manuscript in narrative form. They may seem worthy of credit in the one case, and positively unworthy of all credit in the other. Who can be unmindful of the influence of the manner and carriage of a witness on the stand? There are many things aside from the literal import of the words uttered by the witness while testifying, on which the value of his evidence depends. These it is impossible to transfer to paper. Taken in the aggregate they constitute a vast moral power in eliciting the truth, all of which is lost when read in another court or reproduced in the form of narration. It would seem that the judge who tried the case, looked upon the witness, saw and heard the manner of his testifying, is in a better position to sift the truth and mete out justice than a tribunal bereft of these advantages. However, these are suggestions which, of course, presuppose a fair trial before a fair judge, and do not in any manner assume to reflect the consensus of opinion of the bar of this state, nor are they considered insuperable objections to such a system which obtains I believe in many of the state and uniformly in the federal courts. It is believed by many that the power to review evidence on appeal in equity cases already exists in the Supreme Court, and that what really seems to be desired is that in matters of an equitable nature it shall be the duty of the Supreme Court to exercise such power, and render such judgment as of right ought to be rendered. To what extent the Supreme Court would be bound under the constitution to exercise its power, if conferred, is a question I have not examined, but which suggests itself as worthy of prompt and careful consideration; but in order that your work may not fail for want of executive authority and that no question may arise on that account, I recommend, (in the event you deem it wise or expedient to confer the power of review as indicated in the proclamation) that you also make it the duty of the Supreme Court in equity cases and cases of an equitable nature to exercise such power in such cases and review all questions of fact arising upon the evidence presented in the record and determine the case as well as questions of law so presented unless the good cause, a new trial or the taking of further evidence in the court below shall be ordered. Care, however, should be taken

that the powers of the Supreme Court in other cases are in no manner abridged. As before suggested, there may be some question as to the validity of such legislation, but it is certain that the mere right to review in such cases without an assurance that such right will be exercised might prove to be an empty and unavailing power. Aside from this contingent recommendation made for the sole purpose aforesaid, my only recommendation concerning these matters is that you take up, consider and dispose of them in the solemnity of thought and freedom from bias which is presumed to attend your deliberations, hewing always to that line which indicates the greatest good to the greatest number, letting the chips fall where they may.

I have been importuned since the proclamation was issued calling this session, to extend the scope of your powers so as to include the creation of a Railroad Commission and providing for the Initiative and Referendum, direct primaries and numerous other measures, which, if properly framed, would meet my approval, but which, for obvious reasons ought not to be injected into the deliberations of a special session called for a special purpose.

The constitution requires the Governor to embrace in his proclamation the legislative subjects to be considered, and this was intended to apprise the public at large of what might be expected, so that by discussion in the press and otherwise, public sentiment might crystalize and find expression. It is true that provision is made by which the Executive can in his judgment extend the scope of legislative power by special recommendations, but this should be done only in cases of special character which do not run counter to the reason of the rule requiring publicity by proclamation. I assume that the preparation and passage of proper bills of the character last mentioned would necessarily prolong this session beyond the reasonable expectations of all of us.

It is perhaps true that a railroad lobby could be quickly summoned to represent the railroad interests, but it is not at all probable that the public's interests could be so speedily found or made manifest. A similar request was made of me at the extra session of May last, and in reply to this I said: "The public whose interests are to be affected are likewise entitled to be apprised of the character of legislation which is contemplated at an extra session, and there are no means of doing this without unduly prolonging this session. There may be other matters deemed by some to be quite as important as this, and to permit this would be to open the door which could not be closed without discrimination and just criticism." I have had no reason to change my views as then expressed, and have called attention to the subject now in order that no time may be lost in the useless agitation of subjects not embraced in the call.

There are, however, two matters which may well be considered exceptions and which ought to be considered. At your last regular session a bill was passed, submitting an amendment to the constitution to the qualified electors of the state prohibiting the employment of children under sixteen years of age in under-ground mines, and making a period of eight hours a day's labor on public works and in mills, smelters and under-ground mines. This measure appears to have been well considered and while it met the approval of more than two-thirds of the Senate and a unanimous vote in the House, it failed to become operative because said amendment, together with the ayes and noes of each house thereon was not entered in full on their respective journals as required by section 9, Article 19 of the constitution. If this measure is passed now it can be submitted at the next general election as originally intended, otherwise it will fall through a mere clerical omission. I therefore recommend the enactment of a bill providing for the submission of such amendment.

The other proposition relates to the administration of the office of the State Superintendent of Public Instruction. I am advised that every elective state officer of the executive department has been furnished with a clerk except the State Superintendent of Public Instruction. I am also advised and believe that the orderly and proper dispatch of the business of this office requires a clerk. I accordingly recommend that an appro-

priation not exceeding one hundred and fifty dollars per month be made for that purpose.

JOS. K. TOOLE,  
Governor of Montana".

The Senate retired from the body of the House.

#### NOTICES OF INTRODUCTION OF BILLS.

The following notices were given:

By Self:—A bill to amend section 615 of the Code of Civil Procedure, relating to the change of the place of trial of civil actions.

Also a bill to amend section 180 of the Code of Civil Procedure relating to the disqualification of judges.

Also, a bill providing for the submission to the qualified electors of the State of Montana of an amendment to section 12 of Article 18 of the constitution, relating to District Courts and to District Judges.

By Axtell:—A bill entitled, an act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to Article 18, of the constitution of the State of Montana, by adding thereto three new sections.

By Graham:—A bill entitled an act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to Article 18 of the constitution of the State of Montana, by adding thereto three new sections as follows: Section 3. Prohibiting the employment of children under sixteen years of age in under-ground mines. Section 4. Making a period of eight hours a day's labor on public works and in mills, smelters and under-ground mines. Section 5. Providing for legislation to enforce the provisions of this article.

By Duggan:—A bill to amend section 180 of the Code of Civil Procedure, relating to the disqualification of judges.

By Conner:—A bill for an act entitled, an Act appropriating money for the mileage and per diem of the members, for the pay of officers and attaches and all incidental expenses of the extraordinary session of the Eighth Legislative Assembly of the State of Montana, convened at Helena, December 1st, 1903.

#### INTRODUCTION OF BILLS.

The following bills were introduced:—

By Lanstrum: (by unanimous consent) House Bill No. 1. a bill for an act entitled. An act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to article 18 of the constitution of the State of Montana by adding thereto three new sections. Placed on file.

By Self:— (pursuant to previous notice) House Bill No. 2. A bill for an act entitled an act to amend section 615 of the Code of Civil Procedure, relating to the change of the place of trial of civil actions. Placed on file.

By Duggan: (pursuant to previous notice) House Bill No. 3. A bill for an act entitled, an act to amend section 180 of the Code of Civil Procedure, relating to the disqualification of judges. Placed on file.

By Axtell:—(pursuant to previous notice) House Bill No. 4. A bill for an act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to article 18 of the constitution of the State of Montana, by adding thereto three new sections. Placed on file.

On motion of Self the Committee on Judiciary was authorized to employ Mrs. McIntosh as its clerk.

#### MOTIONS AND RESOLUTIONS.

The following resolutions were introduced:—

By Lynch:—"Mr. Speaker:—I move you that a committee of three be appointed to employ such clerks as may be necessary to do the work at this session."



A division being called upon its adoption, ayes 10, noes 22, motion lost.

By King:—"Resolved that the Speaker be authorized to employ what committee clerks he may deem necessary for the transaction of the business of this session." Adopted.

Also, "Mr. Speaker:—I move that five hundred copies of the Governor's message be printed and that a copy be furnished to each member of this legislature." Adopted.

#### READING OF HOUSE BILLS.

House Bill No. 1, read first and second times and referred to Committee on Labor.

House Bill No. 2, read first and second times and referred to Committee on Judiciary.

House Bill No. 3, read first and second times and referred to Committee on Judiciary.

House Bill No. 4, read first and second times and referred to Committee on Labor.

On motion of Tolman, at 1.25 P. M., the House adjourned to 10 o'clock A. M. to-morrow.

B. F. WHITE,  
Speaker.

NATHAN GODFREY,  
Chief Clerk.

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#### SECOND DAY.

Wednesday, December 2nd, 1903.

House met pursuant to adjournment at 10 o'clock A. M.

Mr. Speaker in the chair.

Roll called, all present except Allen, Brownlee, Buchanan, Hefferlin, Lehsou and Mullins.

Prayer by the Chaplain.

The journal of yesterday was read and laid over until to-morrow.

#### NOTICES OF INTRODUCTION OF BILLS.

By MacGinniss:—A bill for an act to amend section 21 of the Code of Civil Procedure of the State of Montana, providing for the hearing of appeals by the Supreme Court and rendering decisions thereon, being for the purpose of making it mandatory for the Supreme Court to review the facts in equity cases.

#### INTRODUCTION OF BILLS.

The following bills were introduced:

By MacGinniss:—(pursuant to previous notice) House Bill No. 5. An act to amend section 21 of the Code of Civil Procedure of the State of Montana providing for the hearing of appeals by the Supreme Court and rendering decisions thereon, being for the purpose of making it mandatory for the Supreme Court to review the facts in equity cases. Placed on file.

By Graham:—(pursuant to previous notice) House Bill No. 6. An act providing for the submitting to the electors of the State of Montana, for their approval or rejection, amendments to article 18 of the constitution of the State of Montana, relating to labor, by adding thereto three new sections. Placed on file.

By Connor, from Committee on Appropriations:—(pursuant to previous



notice) House Bill No. 7. A bill for an act appropriating money for the mileage and per diem of the members, for the pay of officers and attaches and all incidental expenses of the extraordinary session of the Eighth Legislative Assembly of the State of Montana, convened at Helena, Montana, December 1st, 1903. Placed on File.

### MOTIONS AND RESOLUTIONS.

The following resolutions were introduced:—

By Bever:—"Mr. Speaker:—I move that a committee of three members of the House be appointed by the Speaker to inquire into and report to the House at the earliest practicable date the causes leading to and all facts and incidents connected with the omission from the Journal of the House of appropriate reference to House Bill No. 55, entitled, an act providing for the submitting to the electors of the State of Montana, for their approval or rejection, amendments to article 18 of the constitution of the State of Montana, relating to labor, by adding thereto three new sections, and that such committee be authorized and empowered to send for persons and papers, to administer oaths and to do each and every act that may be proper and necessary for a complete ascertainment of the facts in the premises." Adopted.

Mr. Speaker appointed as such committee, Bever, Graham and Pelletier.

By Cannon:—"Mr. Speaker:—I move that the following special rule shall prevail during this extraordinary session, to-wit: The persons hereinafter named, and none other, shall be admitted to the hall of the House, or the lobbies or rooms leading thereto, viz: all elective state officers, members of the legislature, the commissioners of the Supreme Court, the Secretary and Sergeant-at-Arms of the Senate, ex-members of the House of Representatives who are not interested in any claim, or directly in any bill pending before the legislature, the clerks of the committees when the business of their committee is under consideration, all editors of newspapers within the state, regularly employed reporters for the press having credentials as such to whom seats shall have been duly assigned on the floor by the Speaker and the Sergeant-at-Arms, and it shall not be in order for the Speaker to entertain a request for the suspension of this rule or to present from the chair the request of any member for unanimous consent for that purpose." Adopted.

By Webb:—"Mr. Speaker:—Your Committee on Rules respectfully recommend the following: That Rule 10 be suspended for and during this extraordinary session and that the business of the House be taken up in the order in which it reaches the Speaker's desk or as the House may more particularly direct from time to time." Adopted.

By Stapleton:—"Mr. Speaker:—I move that when the House adjourn, it adjourn until ten o'clock to-morrow morning." Adopted.

House Joint Resolution No. 1, by Linderman, relating to the appointment of a Railroad Commission.

Read for information. Mr. Speaker ruled the resolution out of order, under the restrictions contained in the Governor's message to the extraordinary session.

Miller appealed from the decision of the chair.

Decision sustained.

### READING OF HOUSE BILLS.

House Bill No. 5, read first and second times and referred to Committee on Judiciary.

House Bill No. 6, read first and second times and referred to Committee on Labor.

House Bill No. 7, read first and second times and referred to Committee on Appropriations.

MacDonald introduced the following resolution:

House Joint Resolution No. 2. Whereas, the Supreme Court has de-

clared the portion of the law enacted at the regular session for the protection of game unconstitutional,

Therefore, RESOLVED that the Governor be requested to extend the powers of this special session to amend the game law.

Mr. Speaker ruled the resolution out of order under the restrictions of the Governor's message calling the extraordinary session.

Miller appealed from the decision of the chair.

Mr. Speaker refused to put the question.

On motion of Dwight, at 10.55 o'clock A. M., the House was adjourned until to-morrow at ten o'clock A. M.

B. F. WHITE,  
Speaker.

NATHAN GODFREY,  
Chief Clerk.

### THIRD DAY.

Thursday, December 3rd, 1903.

House met pursuant to adjournment at ten o'clock A. M.

Mr. Speaker in the chair.

Roll called and all members present except Brownlee, Buchanan, Hef-ferlin, Mullins.

Prayer by the Chaplain.

Journal of first and second days read and approved.

#### REPORTS OF STANDING COMMITTEES.

The following reports were made:—

By Self:—"Mr. Speaker:—A majority of your Committee on Judiciary have had under consideration House Bill No. 3, entitled an act to amend section 180 of the Code of Civil Procedure, relating to the disqualification of judges, and report back a substitute therefor with the recommendation that said substitute be referred to the Printing Committee and then placed on General Orders.

JAMES M. SELF, Chairman,  
GUY W. STAPLETON,  
CHAS. F. WORD,  
HENRY J. FAUST,  
CHAS. W. DEMPSTER,  
THOMAS M. EVERETT,  
HARRY A. VAGG,  
GEO. McCONE."

Report adopted and substitute bill ordered printed.

Also: "Mr. Speaker:—A majority of your Committee on Judiciary have had under consideration House Bill No. 2, entitled an act to amend section 615 of the Code of Civil Procedure, relating to the change of the place of trial of civil actions, and report back a substitute therefor with the recommendation that said substitute do pass."

JAMES M. SELF, Chairman,  
GUY W. STAPLETON,  
HENRY J. FAUST,  
THOMAS M. EVERETT,  
HARRY A. VAGG,  
GEO. McCONE."

Substitute adopted and bill ordered printed.

By Dempster:—"Mr. Speaker:—A majority of your Committee on Judiciary having had under consideration House Bill No. 2 would recommend the amendments proposed by a majority of the Judiciary Committee and would

also recommend the following be inserted after the word "in" in the 5th line of the fourth paragraph of section 1, the words "by the judge of the court in which the action is pending".

Respectfully submitted,

CHAS. W. DEMPSTER."

Moved by Dempster, and seconded by Morrissey, that the minority report be adopted. Report laid over and placed on General Orders for consideration in connection with majority report.

#### NOTICES OF THE INTRODUCTION OF BILLS.

The following notice was given:—

By Shannon:—A bill for an act entitled an act to provide for operating mines when the working of such mines has been prevented by injunction or restraining order or where a corporation owning and operating paying mining property voluntary and without cause closes down same.

By Self:—A bill entitled an act appropriating money for the payment of the salary of a clerk in the office of the Superintendent of Public Instruction for the years 1903 and 1904.

#### REPORTS OF STANDING COMMITTEES.

The following report was made:

By Connor:—"Mr. Speaker:—We, your Committee on Appropriations, to whom was referred House Bill No. 7, a bill for an act appropriating money for the mileage and per diem of the members, for the pay of officers and attaches and all incidental expenses of the extraordinary session of the Eighth Legislative Assembly of the State of Montana, convened at Helena, Montana, December 1st, 1903, beg leave to report having had said bill under consideration, and recommend that it do pass."

On motion by Story bill ordered printed.

Motion by Lanstrum: "Mr. Speaker:—I move that when the House adjourn, it adjourn until two P. M. to-morrow."

Connor moved to amend by making it two P. M. to-day. Original motion adopted.

Tolman moved to adjourn, upon which a division was had—ayes 20, noes 26—motion lost.

Hilger introduced the following:

"Whereas, it appears that the Honorable L. J. Pearson, late representative in the Eighth Legislative Assembly from Cascade County, has removed from the State of Montana and is now a resident of Spokane, Washington.

Therefore, BE IT RESOLVED, that the seat of representative Pearson be declared vacant and that he be allowed the privilege of the floor of the House and to participate in all debates in which he may wish to take part in."

Pearson introduced the following:—

"Whereas, Honorable E. W. King has removed his place of residence and his lares and penates from Fergus County to Gallatin County, thereby losing his right to a seat in this body,—

Now, Therefore, BE IT RESOLVED, that it be the sense of this body that said E. W. King be allowed to remain in the body when in session and to vote in the name and place of the Honorable Pat Mullins, and—

BE IT FURTHER RESOLVED, that in order that Fergus County may not suffer thereby, the Hon. David Hilger be given two votes on all questions that may arise in this body during this session."

No action taken on the two foregoing resolutions.

On motion of Bever, at 12 o'clock M. the House adjourned until two o'clock P. M. to-morrow.

B. F. WHITE,  
Speaker.

NATHAN GODFREY,  
Chief Clerk.

## FOURTH DAY.

Friday, December 4th, 1903.

House met pursuant to adjournment at two o'clock P. M.

Mr. Speaker in the chair.

Roll called and all present except Brownlee, Buchanan, Martin and Mullins.

Prayer by the Chaplain.

On motion of Miller the resolution of yesterday referring to members from Cascade and Fergus Counties were ordered expunged from the minutes.

An invitation was received from the Rocky Mountain Bell Telephone Company extending the use of their lines to the members of the House. On motion of Conner a vote of thanks was extended to said company, for the favor extended.

## MESSAGES FROM THE SENATE.

The following messages were received:—

“Mr. Speaker:—I am directed by the Senate to inform your Honorable Body that notice of introduction of bills was given as follows:—By Whipple: A Senate Joint Resolution. By Whipple: A bill to amend section 180 of the Code of Civil Procedure relating to the disqualification of judges. By Hoffman: A bill to amend section 21 of the Code of Civil Procedure relating to the powers and duties of the Supreme Court on appeals. By Kennedy: A bill for an act to submit to the qualified electors of Montana an amendment to the constitution of the state, relating to the hours of labor in mines, mills and smelters. By Ralston: A memorial relating to the withdrawal of public lands.

Respectfully,

X. K. STOUT, Secretary.”

Also:—“Mr. Speaker:—I have been directed by the Senate to inform your Honorable Body that notice of introduction of bills was to-day given as follows: By Maddox: A bill for an act to amend section 180 of the Code of Civil Procedure, relating to the disqualification of judges. By Maddox: A bill for an act to amend section 615 of the Code of Civil Procedure, relating to the change of place of trials of civil actions.

Respectfully,

X. K. STOUT, Secretary.”

Also: “Mr. Speaker:—I have been directed by the Senate to inform your Honorable Body that the following senate bills were to-day introduced and read first and second times: S. B. No. 1, By Hoffman: A bill for an act entitled, an act to amend section 21 of the Code of Civil Procedure, relating to the powers and duties of the Supreme Court on appeals. Senate Joint Resolution No. 1, by Ralston: Relating to the withdrawal of public lands.

Respectfully,

X. K. STOUT, Secretary.”

Graham made the following report:

“Mr. Speaker:—Your Committee on Labor to whom was referred House Bills Nos. 1, 4 and 6 have had the same under consideration and beg leave to report back a substitute in lieu thereof.”

Substitute bill was adopted and ordered printed.

Whitley made the following motion:

“Mr. Speaker:—I move to amend the report of the Labor Committee on House Bills Nos. 1, 4 and 6 to read, “Introduced by Axtell”, instead of “Introduced by Labor Committee”; upon which motion a division was demanded —ayes 17, noes 37—motion lost.

Everett made the following report:

“Mr. Speaker:—Your committee on Printing beg leave to report that



House Bill No. 7, Substitute for House Bill No. 2 and Substitute for House Bill No. 3, have been returned correctly printed.

Respectfully submitted,

THOMAS M. EVERETT, Chairman."

The following message was received from the Senate:

"Mr. Speaker:—I am directed by the Senate to inform your Honorable Body that the following bills were to-day introduced and read first and second times: S. B. No. 2, by Maddox: A bill for an act entitled an act to amend section 180 of the Code of Civil Procedure, relating to the disqualification of judges. S. B. No. 3, by Maddox: A bill for an act entitled, an act to amend section 615 of the Code of Civil Procedure, relating to the change of place of trial of civil actions.

Respectfully,

X. K. STOUT, Secretary."

Miles submitted the following report:—

"Mr. Speaker:—Your Committee on Mileage whose duty it is to ascertain the number of miles traveled by members of the House of Representatives to and returning from the Capital together with the several amounts due said members beg leave to make the following report:

Arthur, Samuel	To the Capitol and Return,	Miles	188	\$18.80
Axtell, F. B.	" " "	"	148	14.80
Bray, C. H.,	" " "	"	10	1.00
Bray, William,	" " "	"	706	70.60
Beaudry, L. E.	" " "	"	200	20.00
Benson, F. G.,	" " "	"	2	.20
Bever, C. C.,	" " "	"	476	47.60
Burt, G. W.,	" " "	"	970	97.00
Cannon, H. S.	" " "	"	986	98.60
Connor, Aaron,	" " "	"	438	43.80
Dempster, C. W.,	" " "	"	148	14.80
Downey, T. D.,	" " "	"	119	11.90
Duggan, L.,	" " "	"	148	14.80
Dwight, Reuben,	" " "	"	250	25.00
Everett, T. M.	" " "	"	526	52.60
Farmer, R. W.	" " "	"	148	14.80
Faust, J. H.,	" " "	"	225	22.50
Flaherty, J.	" " "	"	132	13.20
Gangner, F.,	" " "	"	200	20.00
Giltinan, H. J.,	" " "	"	258	25.80
Graham, D.,	" " "	"	250	25.00
Harrison, W. H.,	" " "	"	336	33.60
Hilger, D.,	" " "	"	420	42.00
Hillman, J. R.,	" " "	"	968	96.80
Johnson, H. E.,	" " "	"	40	4.00
King, E. W.,	" " "	"	420	42.00
Lancaster, J. W.,	" " "	"	314	31.40
Hefferlin, C. S.	" " "	"	250	25.00
Lanstrm, O. M.,	" " "	"	44	4.40
Lehsou, H. W.,	" " "	"	196	19.60
Linderman, F. B.,	" " "	"	356	35.60
Lienemann, L.,	" " "	"	148	14.80
Lynch, J. H.	" " "	"	148	14.80
Martin, J. D.,	" " "	"	200	20.00
Miller, C. B.,	" " "	"	2	.20
Miles, J. H.,	" " "	"	330	33.00
Morrissey, J.,	" " "	"	290	29.00
McCone, G.,	" " "	"	1000	100.00
MacDonald, D. A.,	" " "	"	32	3.20
MacGinniss, J.,	" " "	"	148	14.80
Noble, J. M.,	" " "	"	986	98.60
O'Keefe, T. C.,	" " "	"	200	20.00

	To the Capitol and Return.	Miles		\$
Owen, C. M.,	"	250		25.00
Pearson, L. J.,	"	198		19.80
Pelletier, F. J.,	"	148		14.80
Rice, J. H.,	"	314		31.40
Sales, W. H.	"	180		18.00
Self, J. H.,	"	404		40.40
Schwend, J. H.,	"	200		20.00
Shannon, J.	"	148		14.80
Stadler, L.,	"	2		.20
Stapleton, G. W.,	"	148		14.80
Story, N. Jr.,	"	200		20.00
Swindlehurst, T. M.,	"	250		25.00
Sykes, H. N.,	"	1010		101.00
Teal, T. H.,	"	396		39.60
Tolman, J. N.	"	533		53.30
Tooley, C. P.,	"	284		28.40
Vagg, H. A.,	"	703		70.30
Webb, J. E.,	"	328		32.80
White, B. F.,	"	280		28.00
Williams, D. F.,	"	116		11.60
Whiteley, W. F.,	"	148		14.80
Wilson, C. A.,	"	198		19.80
Wilson, J. B.,	"	2		.20
Wood, G. R.,	"	198		19.80
Woodworth, G.,	"	320		32.00
Word, C. F.,	"	2		.20

Respectfully submitted,

JOHN H. MILES, Chairman."

On motion of Wilson of Cascade, the report in the case of J. E. Webb was changed to read 328 miles instead of 298.

Recess from 2.30 P. M.

On motion of Stapleton the report was adopted as amended.

An invitation was received from the Order of Elks to attend memorial services next Sunday at 3 P. M.

On motion of Dempster, a vote of thanks was extended for the invitation and the same accepted.

On motion of Rice, at 3.50 P. M. the House adjourned until ten o'clock to-morrow.

B. F. WHITE,  
Speaker.

NATHAN GODFREY  
Chief Clerk.

## FIFTH DAY.

Saturday, December 5th, 1903.

House met pursuant to adjournment at 10 o'clock A. M.

Mr. Speaker in the chair.

Roll called and those not found present were Allen, Brownlee, Buchanan, Burt, Martin and Mullins.

Prayer by the Chaplain.

Journal of yesterday read and approved.

Self introduced (by request of W. W. Welch) House Bill No. 8, an act appropriating money for the pay of the salary of a clerk in the office of the Superintendent of Public Instruction for the years 1903 and 1904. Read first and second times and referred to Committee on Education.

Shannon introduced House Bill No. 9, an act to provide for operating mines when the working of such mines has been prevented by injunction or restraining order; or when a corporation owning and operating paying

mining property voluntarily and without cause closes down the same. Read for information.

My Speaker ruled the bill out of order on the ground that it related to subject matter not included in the Governor's message. Shannon appealed from the decision of the chair, upon which a division was called for and decision sustained by the following vote:—ayes 39, noes 10.

On motion of King the House resolved itself into Committee of the Whole on General Orders.

Swindlehurst in the chair.

House resumed.

Mr. Speaker in the chair.

Swindlehurst, from Committee of the Whole, reported as follows:—

"Mr. Speaker:—Your Committee of the Whole, having had under consideration Substitute for House Bill No. 3, beg leave to report that we have considered the same and recommend that it be amended by striking out Section 4 and inserting in lieu thereof the following:—"4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge by reason of the bias or prejudice of such judge, such affidavit may be made by any party to an action, motion or proceeding personally, or by his attorney or agent, and shall be filed with the Clerk of the District Court in which the same may be pending, at any time before the day appointed or fixed for the hearing or trial of any such action, motion or proceeding. Upon the filing of the affidavit the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court nor to the power of calling in another district judge to sit and act in such action or proceeding. No more than five judges can be disqualified for bias or prejudice in said action or proceeding, at the instance of the plaintiff, and no more than five at the instance of the defendant in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding."

and that as amended it do pass."

(signed) "SWINDLEHURST."

Connor moved that the report be adopted.

MacGinniss moved as an amendment that the bill be indefinitely postponed, for the following reasons:

1st. Because it was an insult to the judiciary of the State of Montana.

2nd. Because it will entail great expense upon all litigants in the state of Montana, practically depriving all of the poorer litigants from having their rights determined.

3rd. Because it is against the policy of the law, which is that all matters in litigation shall be speedily determined.

4th. Because it gives to disappointed litigants the right to libel and defame those honorable gentlemen who have been elected and re-elected by the people of their districts as judges thereof, without any opportunity to deny the charges—and makes the mere statement of a litigant that he has reason to believe and does believe he cannot have a fair and impartial hearing or trial before a district judge, conclusive evidence of the unfairness of such judge.

5th. Because if such a law is to continue in force, it will be impossible to get self-respecting and respected lawyers to consent to hold judicial office.

6th. Because one of the rights guaranteed by our constitution is that the people of each judicial district shall have the right to elect their own judicial officers, and this bill deprives the people of that right.

7. That no motion or application to the court can be made on ex-parte affidavits, and this is an attempt to force upon our judicial system an application entirely ex-parte and bases upon an unsupported statement of the belief of a party to the suit, and that he has good reason to so believe.

and yet he does not have to give the reasons of his belief, or any fact tending to show his belief, or any proof.

8th. Because the right to change of venue and change of judges, is confined to civil cases, whereas in those cases where the very liberty and life of the citizen of this state is concerned, have no such right, and indeed, as also in civil cases no such right is necessary.

9th. Because, under the provisions of this bill, there is no time fixed at which the motion must be made, thus giving the litigant the chance to gamble with the court, allow the trial to proceed until some adverse ruling shall be made, and thereupon move for the change, this, as indeed, the whole bill, shows that the rights of the poorer people of this state can never be litigated.

10. Because House Bill No. 3 taken together with House Bill No. 2 makes it impossible that litigation should ever end, and in practice will result in change of venue in all cases of importance. It is provided that no more than two judges from other districts can be called; that would make three judges in the smallest districts, then the other side can question the third judge, and could complain of two judges more and another one must be called in. Then either side could under House Bill No. 2, ask for a change of venue, that would make seven judges and the adversary could row about the new change, and that might make eight. As philosophers say:—"fleas have other fleas, that on them prey; and they have smaller still fleas to bite them, and so proceed ad infinitum." In Silver Bow and Lewis and Clarke counties, the number of changes of judges would be increased, because there are three elected by that district, all of which are to be disqualified under this bill before the limitations as to number of changes begins to be affected.

11. Because with possibly two exceptions, there is no state in this union that allows of more than one change of judges or more than one change of venue. In Oregon the extra change is allowed only for facts arising after the allowance of the first change, and the rule is the same in the other states.

12. Because, it provides for at least seven changes of judges in civil cases, while in criminal cases where a man's life is at stake the laws of Montana provide for only one change of judge or venue.

13. Because great expense for jurors, bailiffs, etc. will be thrust upon the smaller counties, and great delay caused in such counties in the trial of cases in which the citizens thereof are directly interested.

Motion lost.

Report of Committee adopted.

Bill ordered engrossed.

Everett made the following report:—

"Mr. Speaker:—Your Committee on Printing begs leave to report that Substitute for House Bills Nos. 1, 4 and 6, has been returned correctly printed."

(signed) THOMAS M. EVERETT, Chairman."

MacGinniss arose to a point of order:—that Rule No. 10 was not properly suspended by one day's notice having previously been given as prescribed by the rules.

Mr. Speaker ruled that the House was working legitimately on the suspension of Rule No. 10 in accordance with Reed's Rules of Order.

On motion of Connor, the House took a recess at two o'clock P. M. until 3.30 o'clock P. M.

#### AFTERNOON SESSION.

House reassembled at 3.30 P. M.

Mr. Speaker in the chair.

Roll called, quorum present.

Schwend offered the following resolution:—

"Whereas, the Eighth Legislative Assembly of the State of Montana



in extraordinary session assembled is powerless to enact any legislation except such as is set forth in the proclamation of the Governor or may be by him recommended, and

Whereas, recent events demonstrate the power of the corporations to imperil the welfare and prosperity of the people by suspending operations, and

Whereas, the passage of the proposed fair trial bills will leave the people practically at the mercy of the corporations who may at any time and for any fancied grievance order a suspension of operations, thus imperiling the welfare of thousands of our citizens who are dependent upon the continuous operations of these plants and jeopardizing the business interests of the whole state,—

Therefore, BE IT RESOLVED, that we, the members of the House of Representatives hereby petition the Honorable J. K. Toole, Governor of the State of Montana, to recommend the enactment of such legislation as may be necessary to divest the corporations of the power to inflict upon the state in the future a calamity such as was lately threatened by a suspension of operations on the part of the Amalgamated Copper Company."

Mr. Speaker ruled the resolution out of order as not being of a subject matter covered by the Governor's message.

Schwend appealed from the decision of the chair.

Decision sustained by the following vote:—Ayes 39, noes 15.

Whiteley introduced the following resolution:

"BE IT RESOLVED, by the House of Representatives, the Senate concurring, that whereas the State of Montana has, within the past few weeks, witnessed the spectacle of a gigantic foreign corporation engaged in mining in this state, without any cause existing therefor, but solely for the purpose of accomplishing its private ends, closing down its works and throwing thousands of workmen out of employment, thereby bringing needless suffering and destitution to many homes, and

Whereas, said action on part of said company was accompanied by a threat that resumption of work would not be had unless a special session of the legislature should be called for the express purpose of enacting measures which, in the judgment of said corporation, were necessary to enable it to take away from the judges of one of the counties of this state elected by the voters thereof, actions arising in and properly triable in said county to which said corporation is a party, and

Whereas, said threat is a menace to the liberty and prosperity of the state and in effect a legislative holdup which is without precedent or parallel in any state of the Union and advertises to the world the fact that the said company, by the arbitrary closing of its works, is seeking to absolutely control and dictate the legislation of the state to advance its own material interests,

Now, Therefore, BE IT RESOLVED, that it is the sense of the Legislative Assembly of the State of Montana that no extra session of the legislature should or ought to be called at any time at the threat behest or command of any corporation, person or persons. That the regular sessions of the legislature furnish adequate means for correcting, repealing or enacting all necessary measures and that it is an outrage upon the decency of the state and a cloud upon her fair name and an ignominious surrender of her honor and manhood to summon at the expense of the state an extra session of the legislature to enable any person or corporation to further his or its own personal interests."

Whiteley moved its adoption, upon which a division was called. Motion lost by the following vote:—Ayes 12, Noes 34.

On motion of Story, the House resolved itself into Committee of the Whole for the consideration of Substitute to House Bills Nos. 1, 4 and 6 and House Bill No. 7.

Swindlehurst in the chair.

House resumed.

Mr. Speaker in the chair.

Swindlehurst made the following report:

"Mr. Speaker:—Your Committee of the Whole, having had under consideration bills on General Orders, beg leave to report as follows:

1st. That we have considered Substitute for House Bills Nos. 1, 4 and 6 and recommend that it do pass.

2nd. That we have considered House Bill No. 7, and recommend that it do pass.

3rd. That we have considered Substitute for House Bill No. 2, and recommend that it do pass.

(signed) SWINDLEHURST"

Report of Committee adopted.

On motion of Connor the rules were suspended, House Bill No. 7 considered engrossed and bill placed upon its final passage.

House Bill No. 7 read third time and passed by the following vote:

Ayes: Arthur, Axtell, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Connor, Dempster, Downey, Duggan, Dwight, Everett, Faust, Flaherty, Gangner, Giltinan, Graham, Harrison, Hefferlin, Hilger, Hilman, Johnson, Lancaster, Lanstrum, Lehsou, Liene-mann, Linderman, Lynch, Miller, Miles, Morrissey, McCone, MacDonald, Noble, O'Keefe, Owen, Pelletier, Rice, Sales, Self, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal, Tolman, Tooley, Vags, Webb, Whiteley, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker—62.

Noes—Farmer, MacGinniss, Pierson—3.

Absent or not voting—Allen, Brownlee, Buchanan, Burt, King, Martin and Mullins—7.

Title agreed to.

On motion of Axtell Substitute for House Bills Nos. 1, 4 and 6 was considered engrossed under suspension of the rules, and placed upon its final passage.

Substitute for House Bills Nos. 1, 4 and 6, an act entitled,

"An act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to article 18 of the constitution of the state of Montana by adding thereto three new sections as follows:

Section 3. Prohibiting the employment of children under sixteen years of age in under-ground mines.

Section 4. Making a period of eight hours a day's labor on public works, and in mills, smelters and under-ground mines.

Section 5. Providing for legislation to enforce the provisions of this article.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There shall be submitted to the qualified electors of the State of Montana at the next general election to be held within this state, the following amendments to Article 18 of the constitution of the State of Montana relating to labor:

Section 3. It shall be unlawful to employ children under the age of sixteen (16) years of age in under-ground mines.

Section 4. A period of eight hours shall constitute a day's work on all works or undertaking carried on or aided by any municipal, county or state government, and on all contracts let by them, and in mills and smelters for the treatment of ores and in under-ground mines.

Section 5. The legislature by appropriate legislation shall provide for the enforcement of the provisions of this article.

Section 2. The vote upon this amendment shall be counted and canvassed by such persons and in such manner as provided by law for the counting and canvassing of the vote for Member of Congress, and if a majority of all the votes cast at said election for or against said amendment shall be in favor of the amendment, the Governor of the state shall immediately so declare by public proclamation and said amendment shall be in full force and effect as part of the constitution from and after the date of said proclamation.

Section 3. The official ballots to be used at the general election to be held in November, 1904, shall have printed thereon the following words:

"For the amendment to the constitution relating to the rights of labor." and the words: "Against the amendment to the constitution relating to the rights of labor."

Section 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Section 5. This act shall take effect and be in force from and after its passage and approval."

was read third time and passed by the following vote:

Ayes—Arthur, Axtell, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Connor, Dempster, Downey, Duggan, Dwight, Everett, Farmer, Faust, Flaherty, Gangner, Giltinan, Graham, Harrison, Hefferlin, Hilger, Hilman, Johnson, King, Lancaster, Lanstrum, Lehsou, Lienemann, Linderman, Lynch, Miller, Miles, Morrissey, McCone, MacDonald, MacGinniss, Noble, O'Keefe, Owen, Pearson, Pelletier, Rice, Sales, Self, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal, Tolman, Tooley, Vagg, Webb, Whiteley, Wilson of Cascade, Williams, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker—66.

Noes—None.

Absent or not voting—Allen, Brownlee, Buchanan, Burt, Martin, and Mullins—6.

Title agreed to.

Wilson made the following report:

"Mr. Speaker:—We, your Committee on Engrossment, beg leave to report Substitute for House Bill No. 3 as correctly engrossed."  
(signed) C. A. WILSON, Chairman."

On motion of King Substitute for House Bill No. 3 was placed upon its final passage.

Substitute for House Bill No. 3 was read third time and passed by the following vote:

Ayes—Arthur, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Conner, Duggan, Dwight, Everett, Faust, Gangner, Giltinan, Graham, Harrison, Hefferlin, Hilman, Johnson, King, Lancaster, Lanstrum, Lehsou, Lienemann, Linderman, Lynch, Miller, Miles, McCone, MacDonald, Noble, Owen, Pearson, Rice, Sales, Self, Stadler, Stapleton, Story, Swindlehurst, Sykes, Tolman, Tooley, Vagg, Webb, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker—52.

Noes—Axtell, Dempster, Downey, Farmer, Flaherty, Hilger, Morrissey, MacGinniss, O'Keefe, Pelletier, Shannon, Teal, Whiteley—13.

Absent or not voting—Allen, Brownlee, Buchanan, Burt, Martin and Mullins—6.

Excused from voting—Schwend—1.

Title agreed to.

Conner offered the following:

"Mr. Speaker:—I move that the rules be suspended, that Substitute for House Bill No. 2 be considered correctly engrossed, that the bill be placed upon its final passage."

Motion adopted.

Substitute for House Bill No. 2 read third time.

MacGinniss moved, as an amendment, the indefinite postponement of the bill for the following reasons:

"Because of the great expense which will result for jurors, bailiffs and witnesses in removing cases from one county to another for trial entailed upon all litigants.

Because of the great delay in the trial of causes which will necessarily result from change of venue.

Because one of the rights guaranteed by our constitution is that the people of such judicial district shall have the right to elect their own judicial officers, and this bill deprives the people of that right.

Because it is contrary to the provisions of section 26, article 5, of the constitution.

Because no motion or application to the court can be made on ex-parte



affidavits and this is an attempt to foist a new judicial system upon the state.

Because it is retroactive and applies to cases pending, permitting changes of venue to be taken during the progress of the trial of a cause.

Because it has not been properly considered under any rules."

Motion lost.

Bill passed by the following vote:

Ayes—Arthur, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Conner, Duggan, Dwight, Everett, Faust, Gangner, Giltinan, Graham, Harrison, Hefferlin, Hilman, Johnson, King, Lancaster, Lanstrum, Lienemann, Linderman, Lynch, Miller, Miles, McCone, MacDonald, Noble, Owen, Pearson, Rice, Sales, Self, Stadler, Stapleton, Story, Swindlehurst, Sykes, Tolman, Tooley, Vagg, Webb, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Mr. Speaker—50.

Noes—Axtell, Dempster, Downey, Farmer, Flaherty, Hilger, Lehson, Morrissey, MacGinniss, O'Keefe, Pelletier, Shannon, Teal, Whiteley, and Word—15.

Absent or not voting—Allen, Brownlee, Buchanan, Burt, Martin and Mullins—6.

Schwend excused from voting—1.

Title agreed to.

MacGinniss offered the following:

"Owing to the fact that the Journal of the House does not show that we have during this special session adopted any one set of rules, and believing that we have no rules governing the House at the present time, I move you that the Committee on Rules be instructed to report on general rules so that the same may be adopted by the House and be governed by same, and that the Journal of the House be brought in and the minutes of the first day read".

No action taken upon the foregoing motion.

At the hour of 5.55 o'clock P. M., on motion of Mr. Story, the House adjourned until two o'clock P. M. on Tuesday next.

B. F. WHITE,  
Speaker.

NATHAN GODFREY  
Chief Clerk.

## EIGHTH DAY.

Tuesday, December 8th, 1903.

House met pursuant to adjournment at 2 o'clock P. M.

Mr. Speaker in the chair.

Roll called, all members present except Allen, Brownlee, Burt, and Mullins and Buchanan.

Prayer by the Chaplain.

### MESSAGES FROM THE SENATE.

The following messages were received:

"Mr. Speaker:—I am directed by the Senate to inform your Honorable Body that the following bills were to-day introduced and read first and second times:

S. B. No. 4, by Meyer: A bill for an act entitled, an act to amend chapter 4, Title 4, Part 2, Code of Civil Procedure, by adding thereto after section 619 two additional sections to be numbered 620 and 621, providing for the payment of costs on change of venue.

H. B. No. 7, by Committee on Appropriations. A bill for an act entitled an act appropriating money for the mileage and per diem of the members, for the pay of officers and attaches and all incidental expenses of the ex-

traordinary session of the Eighth Legislative Assembly of the State of Montana, convened at Helena, Montana, December 1st, 1903.

Substitute House Bill No. 3, by Judiciary Committee: A bill for an act entitled, an act to amend section 180 of the Code of Civil Procedure relating to the disqualification of judges.

Substitute House Bills Nos. 1, 4 and 6, by Committee on Labor: A bill for an act entitled, an act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to article 18 of the constitution of the State of Montana, by adding thereto three new sections as follows:

Section 3. Prohibiting the employment of children under sixteen years of age in under-ground mines.

Section 4. Making a period of eight hours a day's labor on public works and in mills, smelters and under-ground mines.

Section 5. Providing for legislation to enforce the provisions of this article.

Substitute House Bill No. 2, by Judiciary Committee: A bill for an act entitled, an act to amend section 615 of the Code of Civil Procedure relating to the change of the place of trial of civil actions.

Respectfully, X. K. STOUT, Secretary."

Also: "Mr. Speaker:—I am directed by the Senate to inform your Honorable Body that Senate Bill No. 1, being a bill for an act entitled, an act to amend section 21 of the Code of Civil Procedure relating to the powers and duties of the Supreme Court on appeals, was to-day read third time and passed and is herewith transmitted for your concurrence.

Also, that Substitute for House Bills Nos. 1, 4 and 6, being a bill for an act entitled an act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to article 18 of the constitution of the State of Montana, by adding thereto three new sections as follows:

Section 3. Prohibiting the employment of children under sixteen years of age in under-ground mines.

Section 4. Making a period of eight hours a day's labor on public works and in mills, smelters and under-ground mines.

Section 5. Providing for legislation to enforce the provisions of this article, was to-day read third time and concurred in by a vote of, Ayes 24, Absent 2, and the same is herewith transmitted.

Respectfully, X. K. STOUT, Secretary."

Bever made the following report:

"Mr. Speaker:—The committee of the House duly appointed by its authority to inquire into and report to the House at the earliest practicable date the causes leading to and all facts and incidents connected with, the omission from the Journal of the House of appropriate reference to House Bill No. 55, entitled an act providing for the submitting to the electors of the State of Montana, for their approval or rejection, amendments to article 10 of the constitution of the State of Montana, relating to labor, by adding thereto three new sections, respectfully report that due and careful investigation shows that substitute for said House Bill No. 55 was passed by the House on February 12th, 1903, and thereafter having duly passed the Senate was approved by the Governor on March 3rd, 1903. This bill proposed an amendment to the constitution of the state and was therefore subject to the provisions and requirements of section 9 of article 19 of the constitution, which insofar as germane to the present inquiry reads as follows:

"Amendments to this constitution may be proposed in either House of the Legislative Assembly; and if the same shall be voted for by two-thirds of the members elected in each House such proposed amendments, together with the ayes and nays of each house thereon shall be entered in full on their respective journals."

Each and every requirement of the constitution as quoted was complied with in reference to the bill in question save that part which provides that the same "Shall be entered in full in their respective journals".

Upon all the causes leading to and all the facts and incidents connected

with the omission from the Journal of the House of the bill in question the committee examined under oath David Marks, Assistant Secretary of State; W. J. McHaffie, who furnished the journal upon which the record was made; Journal Clerk Eardley of the House; Mr. Shoemaker, Assistant Clerk of the House; Mr. Godfrey, Chief Clerk of the House; Mr. Garlow, Assistant Journal Clerk; Representative Faust, Chairman of the Committee appointed by the House to read the journal each day and report any errors therein; and Representative Dempster and Vagg, his associate on said committee; and Mr. David J. Whaley, Journal Clerk of the Senate.

From the uncontradicted testimony of these witnesses, the committee finds:

First. That the integrity of the record as made and approved by the Committee and later by the House, stands unimpeached, and from a physical point of view practically unimpeachable. Each page of the record has a combination and no two books have the same combination, so there can be no change. No sheet can be taken out after it is put in, and the only way another sheet could be obtained would be by sending direct to the factory, and the person sending would have to state what it was for and have the combination in order to replace the sheet. Mr. McHaffie, who delivered the book to the House, had no duplicate leaves and could not get them unless by special order, and according to his testimony he was not positive that he could get them personally. They would have to be ordered, according to his view, by the owner of the book and no extra pages were ever ordered by him or by anyone else, as far as the testimony shows, to replace any page of the book in question.

The record relating to House Bill No. 55 was made on February 12th, 1903, and it is obvious that if an effort had been made later to extend the bill in full on the record of that date, it would have been necessary to re-write the pages from that date on to the close of the session, as the additional matter of the bill could not by any possibility have been crowded into a single page and the extension thereof to the following page would have been physically impossible, as the next page was fully covered with matter.

Again, it is found that when writing the journal, which was typewritten, a carbon copy was made of each page and the same was promptly delivered to the Secretary of State for preservation in his office. The page upon which reference is made to the bill in question was found, in the carbon copy in the office of the Secretary of State to correspond exactly with the record in the book. Any attempt to change the record would have necessarily involved a change of the carbon copy in the office of the Secretary of State.

Second. That the ayes and noes in the House were duly entered in the journal on this bill precisely as on other bills and all the requirements were complied with contained in the constitutional provision except that requiring that proposed amendments be entered in full in the journal. In this behalf, it is clearly established by the evidence that this being an exceptional piece of legislation, controlled by a clause in the constitution, the omission was due to a mere oversight in writing up the Journal of both the Senate and the House. A similar oversight occurred in both the Senate and the House in 1897, with reference to a proposed constitutional amendment. The words, "such proposed amendments", found in the body of Section 9, of Article 19, of the constitution, which is a lengthy section, makes the exception governing the unusual treatment of this class of legislation. These words were not called to the attention of the Journal Clerk or his Assistants, who, in the absence of special caution treated the bill under consideration in the regular routine manner applicable to all other bills passed during the session. The committee of the House consisting of Representative Faust, Vagg and Dempster, were charged with the duty of scrutinizing the journal with care and reporting their findings each morning to the House for its action. It was their duty to suggest all mistakes and omissions and needful corrections. It appears that they were diligent and pains-taking in the discharge of the duties assigned them. With reference to House Bill No. 55 particular care seems to have been



taken by the Committee in seeing that the vote was correctly recorded. Mr. Dempster, a member of the committee, testified that during the session he had read section 9, of article 19, of the constitution, his language being as follows: "That was the only time I remember of reading it. I have no doubt read it before in school, as I have taught the Civil Government of Montana and the United States. I have read it in school, but that particular part (requiring that the proposed amendment be entered in the journal in full) never happened to attract my attention, and I simply overlooked it." Messrs. Faust and Vagg, the other members of the committee, frankly testified that they did not know of the constitutional requirement referred to. The Journal Clerk, the Assistant Journal Clerk, the Chief Clerk, the Assistant Clerk, and the Journal Clerk of the Senate all testified that they did not know of the particular constitutional requirement that a bill relating to a proposed constitutional amendment should be entered in full in the journal.

When the volume of business transacted by the regular session is considered, with only one oversight discovered, and that traceable to the causes herein referred to, the very excellent state of the records commands us in justice to say that the clerical force of the House has proven diligent, faithful and competent.

Beyond shade of doubt or question, the omission to enter House Bill No. 55 or the substitute therefor in the Journal of the House was due to a pure oversight on the part of the House and its clerical force. All testimony taken before the committee is herewith filed and made a part of this report.

Respectfully submitted,

C. C. BEVER,  
DAVIS GRAHAM,  
FRANK J. PELLETIER."

Report adopted.

Everett made the following report:

"Mr. Speaker:—Whereas, the Superintendent of Public Instruction is now asking for an appropriation for clerk hire for the two years 1903 and 1904, and has made the statement that he has been compelled to pay for such services for the state out of his salary, and

Whereas, the statement has been made that a considerable sum has been paid for clerk hire in that office since his incumbency, and that there are fees and emoluments besides the salary of the office,

Therefore, BE IT RESOLVED that a committee of three be appointed to administer oaths, examine witnesses, send for persons and papers and do all of the things necessary to thoroughly examine into these matters and report to the House at the earliest practicable moment how much money has been paid for clerk hire, to whom it was paid and how, what fees have been collected and how disposed of, and if a proper expense account is kept."

On motion of Stapleton it was adopted.

Mr. Speaker appointed as such committee Miller, Lynch and Story.

Miller introduced a resolution which was read for information.

Mr. Speaker ruled the resolution out of order for the reason that the subject-matter was excluded by the Governor's message.

Miller appealed from the decision of the chair.

The decision was sustained.

On motion of King at 2.25 P. M., the House took a recess, subject to the call of the Speaker.

House resumed at 3.35 P. M.

Mr. Speaker in the chair.

Quorum present.

Story made the following majority report from Committee on Education:

"Mr. Speaker: A majority of your committee on Education, to whom was referred House Bill No. 8, a bill for an act entitled, an act appropriating money for the payment of the salary of a clerk in the office of the Superintendent of Public Instruction for the years 1903 and 1904, beg leave

to report same back to the House with the recommendation that it be indefinitely postponed.

NELSON STORY, Jr., Chairman,  
C. P. TOOLEY,  
D. F. WILLIAMS,  
C. M. OWEN,  
REUBEN DWIGHT."

Faust moved its adoption.

Dempster made the following minority report:

"Mr. Speaker:—I, a minority of your Committee on Education, having had under consideration House Bill No. 8, a bill for an act entitled, an act appropriating money for the payment of the salary of a clerk in the office of the Superintendent of Public Instruction, for the years 1903 and 1904, would respectfully recommend that the same do pass.

CHAS. W. DEMPSTER."

Lanstrum moved to adopt the report, upon which a division was called, resulting as follows: Ayes 28, noes 24. Report adopted and bill ordered printed.

Lanstrum moved that when the House adjourn, it do adjourn until 2 o'clock P. M. to-morrow.

Cannon moved to amend the hour by making it 10 o'clock A. M. to-morrow, upon which division was called—ayes 15, noes 29—amendment lost.

Original motion carried.

On motion of Dempster, at the hour of 4.55 o'clock P. M., the House adjourned until two o'clock P. M. to-morrow.

B. F. WHITE,  
Speaker.

NATHAN GODFREY  
Chief Clerk.

## NINTH DAY.

Wednesday, December 9th, 1903.

House met pursuant to adjournment at two o'clock P. M.

Mr. Speaker in the chair.

Roll called and all found present except Allen, Brownlee, Buchanan, Burt, Hefferlin and Mullins.

Prayer by the Chaplain.

Minutes of yesterday read and approved.

The following message was received from the Senate:

"Mr. Speaker:—I am directed by the Senate to inform your Honorable Body that the following bills were to-day read third time and passed and are herewith transmitted for your concurrence:

S. J. M. No. 1.

S. B. No. 4.

Also, that Substitute for House Bill No. 3 was read third time and concurred in, and is herewith transmitted.

Also, that Substitute for House Bill No. 2, was read third time and concurred in, as amended, and is herewith transmitted for your concurrence as amended.

Also, that House Bill No. 7 was read third time and concurred in as amended, and is herewith transmitted for your concurrence as amended.

Respectfully, X. K. STOUT, Secretary."

Substitute for House Bill No. 3 referred to Enrolling Committee.

Senate Bill No. 4 referred to Judiciary Committee.

Senate Joint Memorial No. 1, which was ruled out of order on yesterday, was, on motion of Rice, taken up and on his motion the decision of the chair was over-ruled.

Senate Joint Memorial No. 1 referred to Committee on Public Lands.



House Bill No. 7, on motion of Conner, House concurred in Senate amendments to said bill, and bill ordered enrolled.

Self made the following report:

"Mr. Speaker:—Your Committee on Judiciary, to whom was referred House Bill No. 5, introduced by John MacGinniss, entitled, an act to amend section 21 of Code of Civil Procedure of the State of Montana, providing for the hearing of appeals by the Supreme Court, and rendering decisions thereon, reports the same back with the recommendation that further consideration thereof be indefinitely postponed, and for the following reasons:

1. The bill is applicable both to cases in equity and at law. The Governor's proclamation and message directs our consideration to equity cases and matters of an equitable nature only; this bill conflicts with the Governor's injunction that "care" however, should be taken that the powers of the Supreme Court in other cases are in no manner abridged."

2. That it is in effect a denial of the right to a jury trial secured by Section 23, of Article 13, of the constitution of the State of Montana, and of the same right secured by the constitution of the United States.

JAMES M. SELF, Chairman,  
GUY W. STAPLETON,  
CHAS. F. WORD,  
GEO. McCONE,  
THOMAS M. EVERETT,  
HENRY J. FAUST,  
HARRY A. VAGG."

Dempster made the following report:

"Mr. Speaker: 1, a minority of your Committee on Judiciary, having had under consideration House Bill No. 5, a bill for an act entitled an act to amend section 21 of the Code of Civil Procedure of the State of Montana, providing for the hearing of appeals by the Supreme Court and rendering decisions thereon, would recommend that the same be amended by adding thereto sections two and three to read as follows:

"Section 2. All acts and parts of acts in conflict with this act are hereby repealed".

"Section 3. This act shall be in force from and after its passage and approval."

I would further recommend that as amended, the bill be referred to the Printing Committee and placed on General Orders, that it may be thoroughly understood and considered by all."

Respectfully submitted,

CHAS. W. DEMPSTER."

Dempster moved the adoption of the majority report.

Self moved the adoption of the majority report. Majority report adopted.

Dempster moved that House Bill No. 5 be printed, on which a division was called—ayes 18, noes 31. Mr. Speaker decided that the motion having received one-third vote that the bill was properly ordered printed.

Self made the following report:

"Mr. Speaker:—Your Committee on Judiciary to whom was referred Senate Bill No. 1, introduced by Hoffman, entitled, an act to amend section 21 of the Code of Civil Procedure relating to the powers and duties of the Supreme Court on appeals, report said bill back with the recommendation that the same be concurred in.

JAMES M. SELF, Chairman,  
GUY W. STAPLETON,  
CHAS. F. WORD,  
GEO. McCONE,  
THOMAS M. EVERETT,  
HENRY J. FAUST,  
HARRY A. VAGG."

Bill referred to General Orders.

Self moved that the Senate amendments to Substitute for House Bill No. 2 be not concurred in.

MacGinniss moved, as a substitute motion, that the Senate amendments be concurred in.

Mr. Speaker ruled MacGinniss' motion out of order, as it was a duplicate of the former motion in another form. division was called for and the amendment non-concurred in by the following vote: Ayes, 43, noes 11.

MacGinniss again brought his point of order up that the House is acting under no rules. The Speaker again ruled that the House is operating under suspension of Rule 10.

On motion of Cannon, the House resolved itself into Committee of the Whole for the consideration of Senate Bill No. 1 and House Bill No. 8. Swindlehurst in the chair.

House resumed.

Mr. Speaker in the chair.

Swindlehurst reported as follows:

"Mr. Speaker:—Your Committee of the Whole, having had under consideration bills on General Orders, beg leave to report as follows:

1st. That we have considered Senate Bill No. 1 and recommend that it be concurred in.

"SWINDLEHURST."

On motion of Conner report was adopted.

Everett made the following report.

"Mr. Speaker:—Your Committee on Printing begs leave to report that House Bill No. 8 has been returned correctly printed.

THOMAS M. EVERETT, Chairman."

Tooley made the following report:

Mr. Speaker:—Your Committee on Enrollment report Substitute for House Bills Nos. 1, 4 and 6, entitled, an act providing for the submission to the qualified electors of the State of Montana, for their approval or rejection, amendments to Article 18 of the constitution of the State of Montana, by adding thereto three new sections, etc. as correctly enrolled.

C. P. TOOLEY, Chairman."

Mr. Speaker announced that he was about to sign, after reading the title, Substitute for House Bills Nos. 1, 4 and 6, entitled: "an act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection, amendments to Article 18 of the constitution of the State of Montana, by adding thereto three new sections as follows:

Section 3. Prohibiting the employment of children under sixteen years of age in under-ground mines.

Section 4. Making a period of eight hours a day's labor on public works and in mills, smelters and under-ground mines.

Section 5. Providing for legislation to enforce the provisions of this article." and did thereupon, in the presence of the House, sign the Substitute for House Bills Nos. 1, 4 and 6.

On motion of Miller House resolved itself into Committee of the Whole for the further consideration of General Orders.

Swindlehurst in the chair.

House resumed.

Mr. Speaker in the chair.

Swindlehurst reported as follows:—

"Mr. Speaker:—Your Committee of the Whole have had under consideration House Bill No. 8 and recommend that it be amended as follows:

Amend title by striking out the word "clerk" and inserting in lieu thereof "stenographer". Also striking out "s" in "years" and the words "1903 and". Amend section 1 by making it read that the sum of "twelve hundred dollars (\$1200.00) "or so much thereof as the State Board of Examiners deem necessary be, and the same is hereby appropriated out of any money in the state treasury, not otherwise appropriated, for the payment of the salary of a stenographer in the office of the Superintendent of Public Instruction for the fiscal year 1904."

And that as amended it do pass."

"SWINDLEHURST."

The report was adopted.

The following message was received from the Senate:

Helena, Montana, Dec. 9th, 1903."

"Mr. Speaker:

I am directed by the Senate to inform your Honorable body that the Senate to-day receded from the Senate amendment to Substitute House Bill No. 2 by the following vote: Ayes, 23, noes none, absent 2. Excused from voting 1, and same is herewith transmitted."

Respectfully, X. K. STOUT, Sec'y."

Substitute House Bill No. 2 referred to Enrolling Committee.

Senate Bill No. 1 was, by unanimous consent, read third time and concurred in by the following vote:

Ayes—Axtell, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Conner, Downey, Duggan, Dwight, Everett, Farmer, Faust, Flaherty, Gangner, Graham, Harrison, Hilman, Johnson, King, Lancaster, Lanstrum, Lehsou, Lienemann, Linderman, Lynch, Martin, Miller, Miles, MacDonald, MacGinniss, Noble, Owen, Pearson, Pelletier, Rice, Sales, Self, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal, Tolman, Tooley, Vagg, Webb, Whiteley, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker—59.

Noes—Dempster, Hilger, Morrissey, O'Keefe—4.

Absent and not voting—Allen, Arthur, Mullins, McCone, Brownlee, Buchanan and Burt, Hefferlin and Giltinan—9.

Title agreed to.

McCone made the following report:

"Mr. Speaker:—Your Committee on Live Stock and Public Ranges, having had under consideration Senate Joint Memorial Number 1, beg leave to report the following substitute with the recommendation that the substitute do pass.

GEO. McCONE, Chairman,  
J. H. RICE,  
J. N. TOLMAN,  
H. J. GILTINAN,  
DAVID HILGER,  
J. E. MARTIN,  
JOHN FLAHERTY,  
LOUIS STADLER."

On motion of Conner report adopted and Substitute referred to General Orders.

On motion of Miller House resolved itself into Committee of the Whole. Miller in the chair.

House resumed.

Mr. Speaker in the chair.

Miller reported as follows:

"Mr. Speaker:—Your Committee of the Whole, having had under consideration Senate Substitute Joint Memorial No. 1, recommend that it be concurred in.

MILLER."

On motion of Lanstrum report adopted.

On motion of Lanstrum Substitute for Senate Memorial No. 1, rules suspended, Memorial read by title, read third time and concurred in by the following vote:

Ayes—Arthur, Axtell, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Bever, Cannon, Conner, Dempster, Downey, Duggan, Dwight, Everett, Farmer, Faust, Flaherty, Gangner, Giltinan, Graham, Harrison, Hilger, Hilman, Johnson, King, Lancaster, Lanstrum, Lienemann, Linderman, Lynch, Martin, Miller, Miles, Morrissey, McCone, MacDonald, MacGinniss, Noble, O'Keefe, Owen, Pearson, Pelletier, Rice, Sales, Self, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal, Tolman, Tooley, Vagg, Webb, Whiteley, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker—64.

Noes—None.

Absent or not voting—Allen, Benson, Brownlee, Buchanan, Burt, Hefferlin, Lehsou, and Mullins—8.

Tooley made the following report:

"Mr. Speaker:—Your Committee on Enrollment report Substitute for House Bill No. 3 entitled, an act to amend section 180 of the Code of Civil Procedure relating to the disqualification of judges, as correctly enrolled.

Also, House Bill No. 7, entitled an act appropriating money for the mileage and per diem of the members, and for the pay of officers and attaches of the Eighth Legislative Assembly, as correctly enrolled.

C. P. TOOLEY, Chairman."

Mr. Speaker announced that he was about to sign, after reading the title, Substitute House Bill No. 3,

"A bill for an act entitled, an act to amend section 180 of the Code of Civil Procedure relating to the disqualification of judges."

and did thereupon, in the presence of the House, sign Substitute House Bill No. 3.

Mr. Speaker also announced that he was about to sign, after reading the title, House Bill No. 7,

"An act appropriating money for the payment of the mileage and per diem of the members, for the pay of officers and attaches and all incidental expenses of the extraordinary session of the Eighth Legislative Assembly of the State of Montana. convened at Helena, Montana, December 1st, 1903."

and did thereupon, in the presence of the House, sign House Bill No. 7.

Lynch moved that when we adjourn, it be until to-morrow at two o'clock P. M.. Adopted.

On motion of Lanstrum, at the hour of 5.10 P. M., the House adjourned until to-morrow at 2 o'clock P. M.

B. F. WHITE,  
Speaker.

NATHAN GODFREY  
Chief Clerk.

## TENTH DAY.

Thursday, December 10th, 1903.

House met pursuant to adjournment at 2 o'clock P. M.

Mr. Speaker in the chair.

Roll called and all members present except Allen, Brownlee, Buchanan, Burt, Hefferlin and Mullins.

Prayer by the Chaplain.

Journal of yesterday read and approved.

Self made the following report:

"Mr. Speaker:—Your Committee on Judiciary, to whom was referred Senate Bill No. 4, introduced by Meyer, entitled "An act to amend Chapter IV, Title IV, Part II, Code of Civil Procedure, by adding thereto after Section 619 two additional sections to be numbered 620 and 621, providing for the payment of costs on change of venue", beg leave to say that we have had said bill under consideration, and report the same back with the recommendation that it be concurred in."

JAMES M. SELF, Chairman,  
GEO. McCONE,  
GUY W. STAPLETON,  
HARRY A. VAGG,  
CHAS. F. WORD,  
CHAS. W. DEMPSTER,  
HENRY J. FAUST,  
THOS. M. EVERETT."

Bill placed on General Orders.

Wilson made the following report:



"Mr. Speaker:—Your Committee on Engrossment beg leave to report House Bill No. 8 correctly engrossed.

CHAS. A. WILSON, Chairman."

Bill placed on third reading.

Everett made the following report:

"Mr. Speaker:—Your Committee on Printing begs leave to report that House Bill No. 5 has been returned correctly printed.

THOS. M. EVERETT, Chairman."

On motion of Conner the House resolved itself into Committee of the Whole to consider Senate Bill No. 4.

Lanstrum in the chair.

House resumed.

Mr. Speaker in the chair.

Lanstrum made the following report:

"Mr. Speaker:—Your Committee of the Whole have had under consideration Senate Bill No. 4, have amended the title to read as follows: "A bill for an act to amend Chapter IV, Title IV, Part II of the Code of Civil Procedure by adding thereto after Section 619 two additional sections to be numbered 620 and 621 relating to the payment of costs on the disqualification of a judge or the change of place of trial in civil actions." and as amended we recommend it be concurred in.

LANSTRUM."

On motion of Story the report was adopted.

On motion of King, the rules were suspended, Senate Bill No. 4 was read third time by title only and concurred in as amended, by the following vote:

Ayes:—Arthur, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Connor, Dempster, Downey, Dwight, Everett, Farmer, Faust, Flaherty, Gangner, Giltinan, Graham, Harrison, Hilger, Hilman, Johnson, King, Lancaster, Lanstrum, Lehsou, Lienemann, Linderman, Lynch, Martin, Miller, Miles, McCone, MacDonald, MacGinniss, Noble, Pearson, Rice, Sales, Self, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal Tolman, Vagg, Webb, Whiteley, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker.—59.

Noes, Duggan, O'Keefe.

Absent or not voting: Allen, Brownlee, Buchanan, Burt, Hefferlin, Morrissey, Mullins, Owen, Pelletier, Axtell, and Tooley—11.

Title agreed to.

House Bill No. 8, read third time and passed by the following vote:

Ayes: Arthur, Axtell, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Conner, Dempster, Downey, Duggan, Dwight, Everett, Farmer, Flaherty, Gangner, Giltinan, Graham, Harrison, Hilger, Hilman, Johnson, King, Lancaster, Landstrum, Lehsou, Lienemann, Linderman, Lynch, Martin, Miller, Miles, Morrissey, McCone, MacDonald, MacGinniss, Noble, Pelletier, Rice, Sales, Self, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal, Tolman, Vagg, Webb, Whiteley, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker—61.

Noes: Faust—1.

Absent or not voting: Allen, Brownlee, Buchanan, Burt, Hefferlin, Mullins, O'Keefe, Owen, Pearson and Tooley—10.

Title agreed to.

Tooley made the following report:

"Mr. Speaker:—Your Committee on Enrollment report Substitute for House Bill No. 2, an act to amend section 615 of the Code of Civil Procedure relating to the change of the place of trial of civil actions, as correctly enrolled.

C. P. TOOLEY, Chairman."

Mr. Speaker announced that he was about to sign Substitute for House Bill No. 2, an act to amend section 615, of the Code of Civil Procedure, relating to the change of place of trial of civil actions, after reading it by title, he did thereupon sign the same in the presence of the House.

On motion of Miller the House took a recess subject to the call of Mr. Speaker.

House resumed.

Mr. Speaker in the chair.

Roll called, quorum present.

Mr. Speaker announced that he was about to sign Senate Bill No. 1, introduced by Hoffman, a bill for an act entitled an act to amend Section 21 of the Code of Civil Procedure, relating to the powers and duties of the Supreme Court on Appeals, and after reading it by title did thereupon sign the same in the presence of the House.

On motion of Miller a further recess was taken subject to the call of the Speaker.

House resumed at 4:45 P. M.

Mr. Speaker in the chair.

Roll called, quorum present.

The following message was received from the Senate:

"Helena, Montana, December 10, 1903.

Mr. Speaker:—I am directed by the Senate to inform your Honorable body that House Bill No. 8 was today read first and second times.

Also that House Bill No. 8 was to-day read third time and concurred in, and the same is herewith transmitted.

Respectfully, X. K. STOUT, Sec'y."

House Bill No. 8 referred to Committee on Enrollment.

Tooley reported as follows:

"December 10th, 1903.

Mr. Speaker:—Your Committee on Enrollment report that House Bill No. 7, entitled an act appropriating money for the mileage and per diem of the members, for the pay of the officers and attaches of the Eighth Legislative Assembly of Montana, etc., was submitted to His Excellency, the Governor, at 3.30 P. M.

Also, your Committee on Enrollment report that Substitute for House Bill No. 3, entitled "an act to amend section 180 of the Code of Civil Procedure, relating to the disqualification of judges", was submitted to His Excellency, the Governor, at 3.30 P. M.

Also, your Committee on Enrollment report that Substitute for House Bills Nos. 1, 4 and 6, "an act providing for the submitting to the qualified electors of the State of Montana, for their approval or rejection amendments to article 18 of the constitution of the State of Montana, by adding thereto three new sections as follows: Section 3, Prohibiting the employment of children under sixteen years of age in under-ground mines. Section 4. Making a period of eight hours a day's labor on public works, and in mills, smelters and under-ground mines. Section 5. Providing for legislation to enforce the provisions of this article." was submitted to his Excellency, the Governor, at 3.30 P. M.

Also, your Committee on Enrollment report that Substitute for House Bill No. 2, entitled "An act to amend section 615 of the Code of Civil Procedure relating to the change of the place of trial of civil actions" was submitted to his Excellency, the Governor, at 3.30 P. M.

C. P. TOOLEY, Chairman."

The following message was received from His Excellency, the Governor:

"Executive Office, Helena, Mont., December 10, 1903.

To the Speaker of the House of Representatives, House of Representatives, Helena, Montana.

I have had under consideration Substitute for House Bill No. 3 in the course of which I have made a careful comparison of this bill with Senate Bill 87, vetoed by me at the Seventh Session. By Senate Bill No. 87, any person, whether interested in the case or not, could make and file an affidavit reflecting upon the qualifications of the presiding judge for the purpose of changing of venue. By this bill no person except a party to the action, his attorney or agent, can make or file such affidavit. By Senate Bill No. 87, a direct appeal could be had from the decision of the presiding judge upon the question of bias or prejudice, suspending all of the proceedings until such appeal was heard, thereby procrastinating indefinitely a trial on the merits. By this bill the filing of an affidavit operates per se to disqualify the presiding judge according to the courts of legislation in many states

of the Union. By Senate Bill 87, a litigant at the behest of his adversary could be taken out of the county where he resides and away from his friends and neighbors to another county without any effort to substitute another judge in his own county. By this bill and its companion substitute for House Bill No. 2, provision is first made for calling in another judge, and a change of venue awarded only when that contingency fails. Under Senate Bill 87 there was no limit to the number of times newly discovered evidence of bias or prejudice could be submitted after an adverse decision by the Supreme Court, thus encouraging litigants to gamble for a favorable decision and if disappointed to start again the affidavit mill grinding. By this bill a limitation is placed upon the number of judges against whom the disqualification of bias or prejudice can be urged. The number in my opinion is unnecessarily large and in this respect is extraordinary and experimental. It may prove to be exceedingly onerous, if not impracticable, but this is a matter about which a difference of opinion may well exist, and which experience and practice alone can satisfactorily determine. Influenced by the requests of many thousand petitioners and the industrial condition which confronted me, I certainly should have hesitated much longer that I did to call you together, if indeed, I should done so at all, but-I have not found it consistent with my duty to the public to ignore their express wishes in that behalf, or shut my eyes to the possibilities which might have followed a failure to comply with their request. I have heretofore with much earnestness and great sincerity advocated and recommended the initiative and referendum or what is popularly known as direct legislation. The petitions upon which I have acted and by which you have doubtless been more or less controlled in the passage of this bill more nearly approach the principles of the initiative and referendum than anything I can conceive of outside of an amendment to the constitution expressly providing for that system. It has been suggested that the people who signed such petitions were ignorant of the facts, unduly influenced, if not coerced. By some this might be considered an argument against the system I have referred to which initiates legislation upon petitions, but it is one which it would be difficult to prove, perhaps, to the satisfaction of the people themselves.

I am still satisfied that if the people are fit to delegate power they are fit to exercise power by initiating directly such legislation as they approve. I am frank to say, in view of the facts that I am doubtful about the practical utility of this measure, that I would much prefer to allow it to become a law without my signature. Section 12, of Article 7, of the constitution, includes this provision: "If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislative Assembly shall by their adjournment prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislative Assembly unless approved by the Governor within fifteen days after such adjournment." The work of this session is about concluded. It is obvious from the provisions that I have quoted that unless I approve your action, this session will be protracted for the period of five days longer at great expense to the state. Nothing would be gained by such a course except the satisfaction of negative action upon my part, a consideration wholly personal, resting upon a mere pride of opinion, and too small and puerile to be allowed to outweigh the great expense which such a delay would necessarily entail upon the state. For these reasons I approve Substitute for House Bill No. 3, as well as all kindred measures mentioned in the proclamation convening you and passed at this session, including the bill making appropriations for incidental and other expenses of the session.

J. K. TOOLE, Governor."

The following message was received from the Senate:

"December 10th, 1903.

Mr. Speaker:—I am directed by the Senate to inform your Honorable Body that the Senate is of the opinion that the course of Senate Joint Mem-



orial No. 1 and the House Substitute for same has been irregular through your body and same is transmitted for your correction.

Respectfully, X. K. STOUT, Secretary."

On motion of MacGinniss, Senate Joint Memorial No. 1 was referred to the Committee of the Whole.

On motion of Miller the House resolved itself into Committee of the Whole for the consideration of Senate Joint Memorial No. 1.

Swindlehurst in the chair.

House resumed.

Mr. Speaker in the chair.

Swindlehurst reported as follows:

"Mr. Speaker:—Your Committee of the Whole, having had under consideration Senate Joint Memorial No. 1, beg leave to report that we have considered the same and recommend that it be amended and that as amended it be concurred in.

SWINDLEHURST."

On motion of Cannon, the report was adopted.

On motion of Miller, Senate Joint Memorial No. 1 was read third time by title only, and was concurred in by the following vote:

Ayes: Arthur, Bray of Lewis and Clarke, Bray of Rosebud, Beaudry, Benson, Bever, Cannon, Conner, Dempster, Duggan, Dwight, Everett, Farmer, Faust, Flaherty, Gangner, Giltinan, Graham, Harrison, Hilman, Johnson, King, Lancaster, Lanstrum, Lehsou, Lienemann, Linderman, Lynch, Martin, Miller, Miles, Morrissey, McCone, MacDonald, MacGinniss, Noble, O'Keefe, Owen, Pearson, Pelletier, Rice, Sales, Schwend, Shannon, Stadler, Stapleton, Story, Swindlehurst, Sykes, Teal, Tolman, Tooley, Vagg, Webb, Whiteley, Williams, Wilson of Cascade, Wilson of Lewis and Clarke, Wood, Woodworth, Word and Mr. Speaker—62.

Noes none.

Absent or not voting: Allen, Axtell, Brownlee, Buchanan, Burt, Hefferlin, Hilger, Mullins, Self, Downey—10.

On motion of Conner, at 5.15 P. M., the House adjourned until 11 o'clock A. M. to-morrow.

B. F. WHITE,  
Speaker.

NATHAN GODFREY  
Chief Clerk.

## ELEVENTH DAY.

Friday, December 11th, 1903.

House met pursuant to adjournment at 11 A. M.

Mr. Speaker in the chair.

Roll called, all present except Allen, Brownlee, Buchanan, Burt, Hefferlin and Mullins.

Prayer by the Chaplain.

Journal of yesterday read and approved.

Tooley made the following report:

"Mr. Speaker:—Your Committee on Enrollment report House Bill No. 8, entitled "An act appropriating money for the payment of the salary of a stenographer in the office of the Superintendent of Public Instruction for the year 1904" as correctly enrolled.

C. P. TOOLEY, Chairman."

Mr. Speaker announced that he was about to sign Senate Bill No. 4, "A bill for an act to amend Chapter IV, Title IV, Part II, of the Code of Civil Procedure, by adding thereto after Section 619 two additional sections to be numbered 620 and 621 relating to the payment of costs on the disqualification of a judge or the change of place of trial in civil actions", and after reading the title, he thereupon signed the same in the presence of the House.

Tooley made the following report:



"December 11th, 1903.

Mr. Speaker:—Your Committee on Enrollment report that House Bill No. 8, entitled "An act appropriating money for the payment of the salary of a stenographer in the office of the Superintendent of Public Instruction for the year 1904", was submitted to His Excellency, the Governor, at 11.47 A. M.

C. P. TOOLEY, Chairman."

Mr. Speaker announced that he was about to sign House Bill No. 8, an act appropriating money for the payment of the salary of a stenographer in the office of the Superintendent of Public Instruction for the year 1904, and after reading it by title, he did thereupon sign the same in the presence of the House.

A committee from the Senate appeared at the bar of the House and stated that the Senate was about to adjourn sine die.

On motion of Lanstrum a committee composed of Miller, Word and Linderman, was appointed to wait upon the Governor and inform him that the House was about to adjourn sine die.

A committee of three, composed of Lanstrum, Downey and Lehsou, was appointed to wait upon the Senate and to inform it that the house was about to adjourn sine die.

Miller reported that the Committee had waited upon the Governor and performed the duty assigned them.

Lanstrum reported that the committee appointed to wait upon the Senate had performed the duty assigned them.

On motion of Conner, at 12.20 P. M., the House adjourned sine die.

B. F. WHITE,

Speaker.

NATHAN GODFREY,

Chief Clerk.





